

IN THE MATTER OF:

Respondent

DOCKET NO: V-W-13-AO-15

I. INTRODUCTION

- ## II. DEFINITIONS

4. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.
5. "Animal Feeding Operation" means "a lot or facility where . . . (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and, (ii) Crops, vegetation, forage growth, or post harvest

III. FINDINGS

21. Respondent is a person who owns or operates a heifer replacement facility located at the site.
22. The site is an Animal Feeding Operation because:
 - a. the site includes lots or facilities where cattle have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
23. The site is a CAFO and a large CAFO because the site stables or confines as many as or more than 1000 cattle.
24. On June 22, 2011 and January 11, 2013, personnel from the EPA conducted inspections at the site. Copies of both inspection reports generated by EPA as a result of the inspections are included as Attachment 1 to this Order.
25. During the inspections, EPA personnel identified process wastewater being discharged to the East Twin River:
 - a. During the June 22, 2011 inspection, EPA observed process wastewater within the Southern Facility flowing into the Main Ditch from the following areas: the Calf Hutches and the Commodity Barn. EPA observed the Main Ditch discharging into the East Twin River.
 - b. During the June 22, 2011 inspection, EPA observed process wastewater from Barns 7 and 8 flowing through a culvert and discharging directly into the East Twin River.
 - c. During the June 22, 2011 inspection, EPA observed process wastewater from the calf hutches flowing through the central access road that bisected the hutches into an east and west section. The process wastewater then flowed into the North Ditch. The process wastewater discharged from the North Ditch into the East Twin River.
 - d. During the June 22, 2011 inspection, EPA observed process wastewater from Barn 3 and the bull calf hutches flowing west to a ditch in the tree line. The process wastewater flowed north following the ditch and into a culvert, which flowed into the Main Ditch. The Main Ditch discharges into the East Twin River.
 - e. During the June 22, 2011 inspection, EPA observed process wastewater from Barns 4, 5, and 6 flowing west to the end of the barns where it then changed direction and flowed north into the Main Ditch. The Main Ditch discharges into the East Twin River.

B. NPDES Permit

37. Respondent shall comply with the requirements set out in WPDES Permit Number WI-0065013-0.

C. Discharge Minimization and Notification

38. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the site, and any such discharges are subject to enforcement. If for any reason, Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge, and immediately notify the EPA by contacting Cheryl Burdett by telephone at 312-886-1463, by e-mail at Burdett.cheryl@epa.gov, and/or by fax at 312-692-0164. Respondent must also immediately notify WDNR. In addition, Respondent must document the following information and submit a written report to the EPA and WDNR within five days of becoming aware of the discharge, including:

- a. a description of the cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing, and any analytical data;
- b. a description of the area receiving the release (*i.e.*, field, ditch, stream, or other description);
- c. the specific location of the discharge;
- d. the period of discharge, including exact begin and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;
- e. a description of steps taken or to be taken to respond to, contain, and mitigate the discharge;
- f. corrective action taken to prevent recurrences of the discharge; and
- g. a description of apparent impacts to health or the environment resulting from the release, including, but not limited to, threats to surface water supplies, water supply wells, recreational areas, and water quality.

39. Costs: Within 30 calendar days of the effective date of this Order, Respondent must provide to EPA a record of the costs Respondent has incurred and will incur to ensure that Respondent's operation is in compliance with the requirements of this Order including, but not limited to the following:

- a. cost estimates for the design of the storage structure(s) identified in the Waste Storage Plan;
- b. cost estimates for the construction of the storage structure(s) identified in the Waste Storage Plan;

Confidentiality of Submissions

44. Information may not be withheld from the Administrator or her authorized representative because the information is claimed to be confidential by Respondent. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent is entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA at the time such information is provided to EPA. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). EPA is required to consider such information as entitled to protection as trade secrets (33 U.S.C. § 1318(b) and 18 U.S.C. § 1905), except that effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in permit applications may not be considered by EPA as confidential in 40 C.F.R. § 122.7.
45. If Respondent fails to assert a claim of business confidentiality, EPA may make all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. Part 2, Subpart B.
46. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

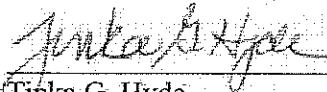
VI. EFFECTIVE DATE AND OPPORTUNITY TO CONFER

47. Within ten 10 days after receipt of this Order, Respondent may request an informal conference with EPA. Any such conference shall be held within 15 calendar days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person, participate by telephone, or be represented by an attorney or other representative. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. This conference is not a formal evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. To request an informal conference, Respondent should contact Cheryl Burdett at (312) 886-1463, or Respondent's attorney may contact Robert L. Thompson, EPA Region 5, Office of Regional Counsel at (312) 353-6700.
48. Regardless of whether a conference is requested, Respondent may submit to EPA in writing via certified mail any relevant information, arguments, or comments, and such information must be received by EPA within 10 calendar days of Respondent's receipt of this Order, unless extended by agreement of the parties.
49. Unless Respondent requests a conference or submits information pursuant to this Section of the Order, this Order is effective 10 calendar days after its receipt by Respondent. If Respondent requests an informal conference or submits written information pursuant to this Section of the Order, this Order will become effective 10 days after the informal conference or EPA's receipt of

VIII. CERTIFICATION OF COMPLETION

54. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit a written certification of completion describing actions taken to comply with all requirements of this Order.
55. After receipt and review of Respondent's certification of completion submitted pursuant to Paragraph 52 of this Order, EPA shall notify Respondent whether all requirements of this Order have been met.

Date: June 11, 2013


Tinka G. Hyde
Director, Water Division